

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

**(1) FEDERAL NATIONAL
MORTGAGE ASSOCIATION,**

Plaintiff,

v.

**(1) CITYR GROUP AT VISTA
SHADOW LLC, a Delaware limited
liability company**

and

(2) MICHAEL SABO, an individual,

Defendants.

Case No. 22-cv-00494-GKF-JFJ

(Tulsa County District Court
Case No: CJ-2022-1513
Judge Caroline Wall)

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441(a)-(b), and 1446, Defendant, Michael Sabo (“**Mr. Sabo**”), files his Notice of Removal of this case from the District Court of Tulsa County, Oklahoma, to the United States District Court for the Northern District of Oklahoma. Removal is proper because: (1) the amount in controversy exceeds \$75,000.00; and (2) complete diversity of citizenship exists between Plaintiff and each of the Defendants, as set forth herein. In support of this Notice of Removal, Mr. Sabo states as follows:

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

1. Plaintiff, Federal National Mortgage Association (“**Fannie Mae**”), filed this removed action in the District Court of Tulsa County, Oklahoma, Case No. CJ-2022-1513,

on September 20, 2022 (“**State Court Action**”), against both Mr. Sabo and CityR Group at Vista Shadow LLC (“**CityR**”; collectively with Mr. Sabo, “**Defendants**”).

2. In its Petition for Breach of Promissory Note and Foreclosure of Mortgage (“**Petition**”), Fannie Mae asserted a claim for breach of a promissory note against both Defendants, alleging that CityR currently owes to Fannie Mae “a principal sum of \$26,292,301.08 plus \$2,587,505.95 in default interest accrued as of October 1, 2020,” and that Mr. Sabo allegedly “personally guaranteed CityR’s obligations.”

3. Fannie Mae caused CityR to be served with a Summons and the Petition on September 26, 2022.

4. On October 14, 2022, CityR’s designated counsel filed its entry of appearance and reservation of time pursuant to OKLA. STAT. tit. 12, § 2012(A). Thereafter, CityR filed its Answer to the Petition on October 27, 2022.

5. On Saturday, October 22, 2022, a process server attempted to serve Mr. Sabo with a Summons and the Petition at Mr. Sabo’s home and domicile, which—contrary to the Petition—is located in New York.

6. New York law provides that service of process may not be effected on Saturdays as to those who observe such days as the Sabbath; indeed to “maliciously” do so is a misdemeanor in New York. *See* N.Y. Gen. Bus. Law § 13 (McKinney).

7. Mr. Sabo is of the Jewish faith, and thus observes Shabbat, which is a 25-hour “day of rest,” which begins at sundown each Friday evening and ends the following Saturday evening, but only when it is dark enough to see three stars in the sky.¹

8. The attempted service of Mr. Sabo was during Shabbat and was, therefore, certainly ineffective.

9. Despite this, Mr. Sabo voluntarily accepted service of process as of Monday, October 24, 2022.

10. Therefore, this Notice of Removal is filed before the expiration of thirty days after service of the Summons and Petition upon Mr. Sabo and removal of this action is timely pursuant to 28 U.S.C. § 1446(b). *See Morgan v. Bd. of Cnty Cmmnrs. of Okla. Cnty et al.*, 2009 WL 10672024, Case No. CIV-08-1317-C (W.D. Okla. 2009) (“Each defendant therefore has thirty days from the date of formal service in which to file a notice of removal.”); *see also Indep. Sch. Dist. No. 5 of Tulsa County, Oklahoma v. Taylor*, 249 F. Supp. 3d 1248, 1253 (N.D. Okla. 2017) (noting that “§ 1446 was amended in 2011” and “now permits ‘[e]ach defendant [to] have 30 days after receipt by or service on *that defendant* of the initial pleading or summons . . . to file the notice of removal.’” (citing 28 U.S.C. § 1446(b)(2)(B))).

¹ The Tenth Circuit Court of Civil Appeals has held that this Court may “take judicial notice of its own files and records, as well as facts which are a matter of public record.” *Tal v. Hogan*, 453 F.3d 1244, 1265 (10th Cir. 2006) (quoting another case)(citations omitted). *See, e.g.*, Britannica, T. Editors of Encyclopedia Britannica, *Sabbath* (Feb. 26, 2020), <https://www.britannica.com/topic/Sabbath-Judaism> (last visited November 5, 2022), attached hereto as an appendix.

11. Contemporaneously herewith, CityR is filing its notice of consent to removal of this matter in accordance with 28 U.S.C. § 1446.

12. Pursuant to 28 U.S.C. § 1446(a) and LCvR 81-2(a), true and correct copies of all process and pleadings served on Mr. Sabo are attached hereto as follows: (1) Summons, attached hereto as Exhibit 1; (2) Petition, attached hereto as Exhibit 2; (3) Order Setting Hearing, attached hereto as Exhibit 3. Pursuant to LCvR 81-2(a), a true and correct copy of the Docket in the State Court Action is also attached hereto as Exhibit 4.

13. By filing this Notice of Removal, Mr. Sabo neither concedes the validity of Fannie Mae's claims as asserted in its Petition nor concedes Fannie Mae is due any claimed damages.

BASIS OF REMOVAL

14. Fannie Mae "maintains its principal office in the District of Columbia . . . and shall be deemed, for all purposes of jurisdiction and venue in civil actions, to be a District of Columbia corporation." Accordingly, for purposes of citizenship, it is domiciled in, and a citizen of, the District of Columbia. *See* 12 U.S.C. §1717(a)(2)(B); Exhibit 2, Petition, ¶ 1.

15. As set forth in CityR's Corporate Disclosure Statement, attached hereto as Exhibit 5, CityR is a limited liability company incorporated in the state of Delaware with its principal place of business in New Jersey. *See also* Petition, Exhibit 2.

16. This Court has held that, for purposes of determining diversity jurisdiction of a limited liability company, this Court must consider the citizenship of the relevant limited liability company's members. Further, when the relevant limited liability

company's members are themselves limited liability companies, then this Court must also take those limited liability companies' members' citizenship into consideration. *See, e.g., Siloam Springs Hotel, L.L.C. v. Cent. Sur. Co.*, 781 F.3d 1233, 1234 (10th Cir. 2015).

17. Here, as evidenced by CityR's Corporate Disclosure Statement and the Exhibits attached to it, none of CityR's Members are citizens of the District of Columbia or Oklahoma. *See* Exhibit 5.

18. Further, as set forth above, Mr. Sabo is a citizen on New York. As such, there is complete diversity of citizenship between the Defendants and Fannie Mae.

23. All named Defendants consent to removal of this matter in accordance with 28 U.S.C. § 1446.

REQUEST FOR RELIEF

Mr. Sabo respectfully removes this action from the District Court of Tulsa County, Oklahoma, to this Court, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, and CityR hereby provides its consent to such removal. Should any question arise as to this removal, Defendants respectfully request an opportunity to provide additional briefing as to why removal is proper.

Dated: November 7, 2022

Respectfully submitted,

**HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.**

Tami J. Hines, OBA # 32014
Alyssa M. Gillette, OBA #33891
100 North Broadway, Suite 2900
Oklahoma City, OK 73102-8865
Telephone (405) 553-2828
Facsimile (405) 553-2855
thines@hallestill.com
agillette@hallestill.com

-and-

/s/ Lauren M. Marciano
Jerrick L. Irby, OBA #30876
Lauren Marciano, OBA #32454
320 South Boston, Suite 200
Tulsa, OK 74103-3706
Telephone (918) 594-0400
Facsimile (918) 594-0505
jirby@hallestill.com
lmarciano@hallestill.com

**ATTORNEYS FOR CITYR GROUP AT
VISTA SHADOW LLC AND MICHAEL
SABO**

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2022, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing and transmittal of Notice of Electronic Filing to all ECF registrants.

I hereby further certify that on the 7th day of November, 2022, a true and correct copy of the above and foregoing instrument was placed in the United States mail, first class, postage prepaid, to the following:

Christopher Scaperlanda
Ross Plourde
McAfee & Taft
8th Floor, Two Leadership Square
211 N. Robinson
Oklahoma City, OK 73120
Christopher.scaperlanda@mcafeetaft.com
Ross.plourde@mcafeetaft.com

Charles Greenough
McAfee & Taft
Two West Second Street, Suite 1100
Tulsa, OK 74103
Charles.greenough@mcafeetaft.com

/s/ Lauren M. Marciano
Lauren M. Marciano